

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

JUDGMENT

Hava Singh vs. The State of Rajasthan.

D.B.Cri. Appeal No.102/2003

Under Section 374 Cr.P.C. against
the judgment and conviction dated
21.11.02 passed by the Addl. Sessions
Judge (Fast Track), Churu, Camp Rajgarh
in Sessions Case No.18/2002.

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Date of Judgment:

30th July, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.K.K.Kalia for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal has been filed by Hava Singh against the
judgment of the court of Additional Sessions Judge, (Fast Track)
Churu, Camp Rajgarh, in Sessions Case No.18/2002 dated 21.11.02.

Prosecution was initiated on the basis of a first

information report lodged at Police Station, Sidhmukh, on the basis of a written report filed by Smt.Sharmila. In her written report she has stated that her husband has two more brothers. One Shishpal lives in Haryana since last ten years. The younger one is Hava Singh, who lives with her father-in-law. There was some dispute about partition of the land. Yesterday, when she and her husband the deceased were cutting crop, at that time accused Hava Singh with 'jailly' and her father-in-law, with a 'kasiya', came near them and exhorted them that they should not cut the crop, as the matter of partition has so far not been settled. On which, her husband the deceased and accused Hava Singh entered into a quarrel. Then at that time Mukna Ram, is alleged to have exhorted the accused Hava Singh that he should finish the deceased and that Hava Singh gave first blow and then Mukna Ram also started hitting and both of them caused multiple injuries on the person of the deceased. From the post mortem report we find that following injuries were on the person of deceased:-

“Lacerated wound at right parietal region of Head 3”x 1/2”, edges of wound stained and blood not removable by washing. Clotted blood present in underlying soft tissue. There is fracture of right parietal and temporal bone. There is

subdural and intra cerebral haemorrhage present over both cerebral hemispheres.”

(2) Lacerated wound 1 1/2” x 1/2”x bone deep on left frontal region of scalp, haematoma present in underlying soft tissue.”

The investigation was conducted and charge sheet was filed against Hava Singh. As the other accused was not apprehended, trial proceeded against Hava Singh . At the trial the accused denied the charges and claimed trial. After trial, the learned trial court convicted and sentenced the accused appellant Hava Singh under Section 302/34 IPC and sentenced him to life imprisonment with a fine of Rs.500/-. Accused Mukna Ram is still at large.

The learned counsel for the appellant has not challenged the fact of the incident. But he , however, laid stress on the manner of occurrence. According to the learned counsel, the information given in the first information report is very specific that first injury was caused by Hava Singh and then the other accused followed ,and they gave multiple injuries. The medical evidence is to the effect that there were only two injuries. Thus, according to the learned counsel,

the eye witness ' account, as contained in the FIR, is not correct and in that background the conviction of the accused appellant under Section 302/34IPC cannot be sustained.

It was a case where quarrel started prior to the incident wherein parties were at lower heads in relation to the partition. Both the accused, if participated, have only given one injury each and in that background, the account of the incident, as given by the eye witness cannot be accepted. The deceased did not die instantly. He was taken home by the accused and made him comfortable and the deceased died subsequently. In this background, the accused have not taken a serious advantage, of the situation and have not been cruel beyond expectations. Their case squarely falls in Exception 4 of Section 300 IPC and in that light, the accused cannot be convicted under section 302 IPC. The case would fall within the ambit of Section 304(1) IPC.

The learned Public Prosecutor was at a loss in defending the argument of the learned for the appellant.

We have heard learned counsel for the parties and have given our thoughtful consideration to the material available on record.

Since both the accused persons can at best be attributed

only one injury, it cannot be said that accused had used the situation to his advantage and was cruel enough to bring his case within the definition of Section 302 IPC. Prosecution came with a case of multiple injuries, whereas there were only two injuries. Further the accused can not be considered to have repeated the blows. Which specific injury was caused by particular accused is also not clear. The case was of a sudden quarrel. No premeditation can be assigned.

In that view of the matter, we are of the opinion that the conviction of the accused under Section 302/34 IPC is not sustainable and consequently the sentence awarded under section 302/34 IPC are also liable to be set aside. His conviction is altered from Section 302/34 IPC to Section 304(1) IPC and the accused appellant is sentenced to 8 years' R.I. and a fine of Rs.500/-.

Consequently, the appeal is partly allowed. The conviction of the accused appellant is altered from Section 302/34 IPC to Section 304(1) IPC and he is sentenced to 8 years' R.I. And a fine of Rs.500/-.

(MUNISHWAR NATH BHANDARI), J.

(BHAGWATI PRASAD), J.